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RIGHT OF SEARCH AND SEIZURE UNDER PROHIBITION ACT.

The recent tragedy in the Valley, where two men were shot and killed by prohibition agents while engaged in the illegal importation of liquor into Virginia, has forcibly directed public attention to the administration of the prohibition act. The loss of two lives is a serious matter. The enforcement of the law is also a serious matter. Many people will form a judgment as to the wisdom or unwisdom of prohibition from the outcome of the pending trial of the officers who shot the alleged bootleggers, for it is notorious that the practical enforcement of a law frequently serves to convince the public as to its desirability and necessity.

In a sense the prohibition act is on trial in the minds of many law-abiding Virginians. They believe in prohibition and in the enforcement of the laws, as does the writer. They also believe in other things as well, among them fundamental rights guaranteed by the constitution of the United States and by the Bill of Rights of Virginia. Those fundamental rights are to be safeguarded, whether the prohibition act is enforced or not. Those rights are the foundation stones of liberty, and were formulated and declared as a result of the experiences of a thousand years. They are not to be set aside or disregarded by anyone for any purpose. If the enforcement of the prohibition act, as now administered, necessitates the overriding and disregard of the fundamental rights guaranteed by the constitution of the United States, then the prohibition act cannot and ought not to be enforced. It will have to be changed so that its enforcement will not conflict with constitutional guarantees. This the people demand, and they are right in demanding it. The real friends of prohibition demand the same thing. They want to see law-enforcement, and not a disregard of law.

The writer does not intend to attempt to pass on the merits of the pending case involving the officers now held for trial. That case is before the courts. The prisoners are presumed to be innocent until they are proven guilty. They are entitled to the benefit of that presumption in the fullest sense, and any at-

tempt to prejudice their case in the newspapers would be eminently unfair. The purpose of this article is to call attention to the search and seizure provisions of the prohibition act, around which the present public interest is centered. The real question in the mind of the public is whether the prohibition agents have the right to search a man's baggage, or his berth or compartment on a railroad car, or his automobile or house, without a search warrant.

Section 29 of the prohibition act purports to give him the right to break open and enter a house, building, boat, car or place, or any room or part of any of them. But this right is given only to an officer "charged with the execution of a warrant."

But section 35 expressly purports to give to deputies and inspectors appointed by the prohibition administration the right, "with a warrant," to enter buildings, and the right, "without a warrant," to enter freight yards, passenger depots, baggage and storage rooms of any common carrier. It further says "and may *enter* any train, baggage, express, pullman, or freight car, and any boat, automobile or other conveyance, whether of like kind or not, where there is reason to believe that the law relating to ardent spirits is being violated." From the verbiage and punctuation, it is not clear whether or not it was intended to authorize such *entering* in this latter case "without a warrant."

But section 57 of the act specifically provides that: "When any officer charged with the enforcement of this law shall have reason to believe that ardent spirits are being transported in any wagon, boat, buggy, automobile or other vehicle, whether of like kind or not, contrary to law, he shall have the right and it shall be his duty to obtain a warrant to search such wagon, boat, buggy, automobile or other vehicle, and to seize any and all ardent spirits found therein which are being transported contrary to law." Section 57½ provides for the execution of such warrants.

Obviously, the legislature recognized that the agent must secure a warrant before attempting to *search* any "wagon, boat, buggy, automobile or other vehicle." And the necessity for

such warrant in making these and similar searches of other property is obvious upon reading the provisions of the constitution of the United States and of the Bill of Rights of Virginia.

The fourth amendment to the constitution of the United States reads:

“The right of the people to security in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

Section 10 of the Virginia Bill of Rights provides: “That general warrants, whereby an officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offense is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.”

It is evident that the constitution of the United States prohibits unreasonable searches and seizures, and recognizes that they shall be made only upon warrants, duly sworn to, so that the responsibility for the same may be placed. Moreover, the Bill of Rights of Virginia prohibits the issue of general warrants. These are the supreme laws of this State, and the legislature of Virginia cannot make legal any act in contravention of these fundamental rights, even if it tried to do so. If any provision of the prohibition act violates a right granted by the constitution of the United States or of Virginia, that provision is unconstitutional and illegal. The prohibition commissioner cannot enforce the provisions of a legislative act by violating a constitutional guarantee. That guarantee is supreme. To attempt to override it is lawless. Law enforcement is not secured by lawlessness, even on the part of a public officer. If the prohibition act cannot be enforced without violating the provisions of the constitution of the United States or of the State of Virginia, then it ought not to be enforced and cannot

be enforced. The maintenance of the fundamental rights guaranteed by the constitution is of more importance than the enforcement of the provisions of any specific act.

It has been stated in the papers that agents of the prohibition department have seized and searched private baggage, and have entered occupied berths and compartments on pullman trains and searched the same without warrants. Can there be any question that such a proceeding, if it has taken place, is illegal and unconstitutional?

Let us assume a case. John Doe, a private citizen, secures a berth on a pullman car from New York to Richmond. He has with him a grip containing clothing and papers. He has no ardent spirits of any kind. He is a law-abiding citizen, attending to his own business, and not violating any statute.

At Fredericksburg a prohibition officer enters the pullman and proceeds to seize and search the grip of John Doe, and to enter and search his berth. John Doe protests and demands to see the search warrant. The prohibition agent has no warrant, but proceeds with his search.

Who has violated the law? Certainly John Doe has not. And equally certainly the prohibition agent has violated it. The prohibition agent in such case has been lawless—and, being an officer of the law, his knowingly lawless act is inexcusable and should be punished.

Again, let us assume that John Doe has an illegal amount of liquor in his grip, and that the agent searches the same without a warrant and finds the liquor. John Doe is committing an unlawful act and is punished, as is proper. But the prohibition officer has also committed an unlawful act and goes unpunished. Two wrongs never yet made a right. The officer's unlawful act may result in the discovery of a breach of the law by John Doe, but that doesn't justify the unlawful act of the officer.

Many good citizens are so desirous that the prohibition act shall be enforced that they are disposed to overlook and minimize the breach of the law by the officer. Some of our newspapers even ask how the law is to be enforced if search warrants are required, if "its teeth are drawn," as they put it.

They argue that the advantages of prohibition are so great that this disregard of constitutional rights ought to be overlooked. It is the old argument that "the end justifies the means"—and it has been used from the beginning of history as an attempted justification for illegal acts. It is a dangerous doctrine—and should have no weight in the argument.

The writer is most earnestly convinced of the value of prohibition, and of the necessity of enforcing the prohibition laws, but he is also strongly convinced of the greater value of the fundamental rights guaranteed by the constitution. He looks with apprehension on any continued disregard of these fundamental rights—even in the effort to enforce a much needed reform. The officials entrusted with the enforcement of the prohibition act are not above the law—they are subject to it. They have no right to disregard the constitutional provisions for the protection of the citizen. They must proceed lawfully—not lawlessly. If the prohibition act cannot be enforced, as it now stands, without violating the constitution, then let's change the prohibition act. In any case, the rights guaranteed under the constitution must be preserved.

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